

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 9834 of 1998

For Approval and Signature:

Hon'ble MR.JUSTICE A.K.TRIVEDI

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1. Whether Reporters of Local Papers may be allowed : YES
to see the judgements?

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?

4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?

5. Whether it is to be circulated to the Civil Judge? : NO

VISHNU NAGU PAWAR

Versus

COMMISSIONER OF POLICE

Appearance:

MR SATISH R PATEL for Petitioner
Mr. K.T. Dave, A.P.P. for Respondent No. 1, 2, 3

CORAM : MR.JUSTICE A.K.TRIVEDI

Date of decision: 16/09/1999

ORAL JUDGEMENT

Leave granted to the petitioner to amend Annexure "B" at page 12 of the compilation so as to substitute the word "Jamnagar Jail" instead of "Bhuj Jail". The petitioner to carry out the amendment forthwith.

Heard learned Advocate Mr. Satish R. Patel for

the petitioner and learned A.P.P. Mr. K.T. Dave for the respondents nos.1, 2 and 3.

1. The petitioner has filed the present petition under Article 226 of the Constitution of India with a prayer for appropriate writ or direction to quash and set aside the order of detention dated 7-10-1998 passed by the respondent no.-1-Commissioner of Police, Ahmedabad City against the petitioner in exercise of powers conferred by Section 3(1) of the Gujarat Prevention of Antisocial Activities Act, 1985 ("PASA" for short).

The petitioner has also prayed for his liberty forthwith.

2. The petitioner has produced the impugned order and the committal order vide Annexures "A" "B" while the grounds of detention supplied to the petitioner as required under Section 9(1) of "PASA" has been produced by the petitioner at Annexure "C" of the compilation.

3. Perusal of the grounds of detention discloses the fact that Prohibition Case vide CR no.226/98 was registered at South Zone Prohibition Station on 5-10-1998 against the petitioner for the offences made punishable under Bombay Prohibition Act and countrymade liquor of 1500 litres alongwith one Tata Sumo car were seized. The matter is pending investigation.

4. Over and above the above stated Prohibition Case filed against the petitioner, two witnesses on assurance of anonymity have furnished information regarding the bootlegging activities of the petitioner vide their statements which were recorded on 15-9-1998 and 10-9-1998 respectively. The Police Commissioner, Ahmedabad as detaining authority relying on the papers of the Prohibition Case filed against the petitioner as well as the statements given by the witnesses has held that the petitioner is a bootlegger within the meaning of Section 2(b) of "PASA" and that the antisocial activity of the petitioner is of such an extent which prejudicially affect the maintenance of public order and resort to general law is insufficient to prevent the petitioner from continuing his such activity, and as such it is necessary to detain the petitioner under "PASA". The detaining authority having claimed privilege under Sec.9(2) of "PASA" in respect to information supplied by the witnesses have recorded the satisfaction that, in the instant case, it is necessary to detain the petitioner and has passed the impugned order and supplied the grounds of detention to the petitioner. The petitioner

is directed to be kept in Jamnagar Jail and be treated as Class II detenu.

5. The petitioner has challenged the impugned order on numerous grounds.

It has been contended on behalf of the petitioner that the petitioner vide his representation dated 27-7-1999 addressed to the Deputy Secretary, Home Department, State of Gujarat sent by registered A.D. post (copy of which is produced on record at Annexure I) of the compilation has claimed copies of statements of witnesses, namely, P.I. C.T. Suthar, S.P. Travad and others and also report of chemical analyzer in respect to offence registered against the petitioner.

6. That in reply dated 31-7-1999, the respondent no.2 has stated that the representation of the petitioner having been considered stands rejected. The learned Advocate for the petitioner further submitted that the report of chemical analyzer had been annexed with the said reply, however, he has urged that said reply is silent about supply of copies of statement of witnesses recorded by the Investigating Officer as claimed vide representation dated 27-7-1999 which prevented the petitioner from making effective representation against his illegal detention, and thereby, valuable fundamental right of the petitioner guaranteed under Article 22(5) of the Constitution have been violated and the continued detention of the petitioner has become illegal.

7. As against that the learned A.P.P. Mr. K.T. Dave has submitted that the statements claimed by the petitioner were neither referred to nor relied on by the detaining authority while passing the impugned order, and as such, there is no question of supplying the same.

8. In the instant case, it is difficult to uphold the submission urged on behalf of the respondent. Article 22(5) of the Constitution provides safeguard against the illegal detention and an opportunity to the detenu to make effective representation at the earliest. Non supply of document which is necessary to make effective representation would violate the rights of the petitioner, and as such, continued detention would become illegal. Such proposition has been accepted as a part of law by various High Courts and the Apex Court including this Court.

9. This Court while deciding Spl.C.A. no.2080/93 on 22nd August, 1994 (Coram: B.S. Kapadia & N.J.

Pandya, JJ.) following the said proposition has held the continued detention as illegal. Following the said dictum, in the present case also, the petition deserves to be allowed.

10. On the basis of the foregoing discussion, the petition is allowed. The impugned order dated 7-10-1998 passed by the respondent no.-1-Police Commissioner, Ahmedabad City against the petitioner-detenu is hereby quashed and set aside. The petitioner-detenu- Vishnu Nagu Pawar is ordered to be set at liberty forthwith, if not required in any other case. Rule is made absolute accordingly.

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